

OGC Has Reviewed

17 December 1974

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MEMORANDUM FOR: Deputy General Counsel

SUBJECT : Presidential Recordings and
Materials Preservation Act (S. 4016)STATINTL !
STATINTL !

1. In accordance with your request (Tab A), attached are my comments to the subject Act. As you may remember OLC asked some time ago (Tab B) that we comment on the original S. 4016 (which became Title I of this Act). Because of the timing involved, [REDACTED] and I discussed the matter and he drafted comments (Tab C). As pointed out by [REDACTED] and by the House Committee Report (No. 93-1507) on the subject, the Administrator, GSA, has 90 days to draft regulations for the administration of Title I of the Act. These regulations are subject to Congressional approval. The Report states that the Administrator is to take into account "the need to limit general access to material relating to national security." I suggest that this Office contact the appropriate party within GSA within the near future to determine how they plan to accommodate this direction in their regulations.

2. Title II of the Act amends Chapter 33 of Title 44 of the U.S. Code. The amendment establishes the National Study Commission on Records of and Documents of Federal Officials. The Commission's purpose is to study the control, disposition and preservation of records and documents produced by or on behalf of Federal Officials. The Commission's study is to include the eight subject areas of:

(1) whether the historical practice with respect to Presidential records and documents should be rejected or accepted, and whether such practice should be made applicable with respect to all Federal officials; (2) the relationship of the findings of the Commission to other provisions...of title 44..., and other Federal laws relating to control, disposition, and preservation of records and documents of Federal officials; (3) whether the findings of the Commission should affect control,

disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes; (4) the recordkeeping procedures of the White House Office; (5) rules which should apply to control, disposition, and preservation of records and documents of Presidential task forces, commissions, and boards; (6) criteria for determining the scope of materials which should be considered the records and documents of Members of the Congress; (7) the privacy interests of individuals who communicate with Federal officials; and (8) any other problems which the Commission considers relevant to carrying out its duties.

The eight subject areas seem to center on the document and records handling procedure of the President and the White House Office and Members of Congress. Unfortunately, the "records and documents of Federal officials" are included within the scope of the study which would seem to authorize the Commission access to at least some of the Agency's record maintenance practices. In this regard Section 3320 of the Act authorizes the Commission to hold hearings and receive testimony and evidence. That Section also authorizes the Commission to secure information from any department or agency if such information is necessary to enable the Commission to carry out its functions.

3. The term "Federal official" is defined by the Act to include "any officer of the executive, judicial, or legislative branch of the Federal Government." The House Report states that "Federal officials would include elected officials, members of the Federal judiciary, and other appointed officers of the government." One might argue that the class of officials within the scope of the study would be Presidential appointees; however, a literal interpretation of this report language would include all individuals "appointed" to the Federal service. The scope of this interpretation together with the authority to obtain information from the heads of departments and agencies seems to be broad enough to permit the Commission to explore the Agency's records maintenance practices (and possibly the records themselves). This, of course, is not a totally new and unique exploration authority as various other provisions of Title 44 give various Federal officials certain authorities over the Government's records management program. Whether the scope of such a study can afford to be that detailed

is a large question. As the study must be completed by 31 March 1976 unless the Commission has a very large staff and budget, I doubt whether it can explore the Agency's practices in detail that would cause us concern. FOIAb5
A point that mitigates against this view, however, is that the Agency is organizationally within the Executive Office of the President.

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STATINTL

Assistant General Counsel

cc: OLC

JED: cap

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